

### **III. REMARKS**

#### **A. Status of the Claims**

Claims 31-51 were pending at the time of the Office Action dated February 2, 2006. Claims 33 and 35-43 have been withdrawn. Accordingly, claims 31, 32, 34, and 44-51 were examined in the Action.

In Applicants' response filed on May 2, 2006, claim 48 has been amended to independent format. The claims from which claim 48 previously depended (*i.e.*, claims 31 and 44) have been cancelled. Claim 48 was also amended to include the limitation that the vaccine composition does not contain a whole-cell lysate of a *Borrelia* pathogen. Support for this limitation can be found in the Specification at page 7, lines 8-18. Negative limitations can be used in patent claims (MPEP § 2173.05(i)). Additionally, claims 32-38 and 45-47 were cancelled. New claims 88-91 were added. Withdrawn claims 40-43 were amended to conform with the amendments made to the claims currently under examination. No new matter was added by these amendments. Thus, claims 40-43, 48, and 88-91 are pending, and claims 48 and 88-91 are currently under examination.

The Office Communication dated June 30, 2006, indicated that the amendment to the claims filed on May 2, 2006, did not comply with the requirements of 37 C.F.R. §1.121(c) because the status identifiers for amended claims 41, 42, and 43 were improperly listed as "withdrawn" rather than as "currently amended" (Office Communication, p. 2). Applicants note that withdrawn claim 40 was also amended in the amendment to the claims filed on May 2, 2006. Applicants hereby submit an amendment to the claims that is the same as the amendment filed on May 2, 2006, except that the status identifiers for claims 40-43 have been changed to "withdrawn – currently amended."

**B. “Withdrawn” is a Proper Status Identifier for Currently Amended, Withdrawn Claims**

The Office Communication dated June 30, 2006, indicated that the amendment to the claims filed on May 2, 2006, did not comply with the requirements of 37 C.F.R. §1.121(c) because the status identifiers for amended claims 41, 42, and 43 were improperly listed as “withdrawn” rather than as “currently amended” (Office Communication, p. 2). To advance the prosecution of this case, Applicants have changed the status identifier for these claims to “withdrawn – currently amended” as agreed in the interview with Examiner Swartz on July 10, 2006. Nevertheless, Applicants maintain that “withdrawn” is an appropriate status identifier for withdrawn claims that are being amended.

***1. 37 C.F.R. § 1.121(c)(2)***

As the following underlined passage of § 1.121(c)(2) states, claims having the status of “currently amended” or “withdrawn” can include markings showing amendments. If a withdrawn claim is being amended, then its status may be identified as “withdrawn – currently amended.”

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn— currently amended.”

## 2. MPEP § 714

The following passage from MPEP § 714 (page 700-217) also states that “withdrawn” is a proper status identifier for withdrawn claims that are being amended.

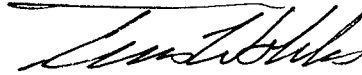
For any amendment being filed in response to a restriction or election of species requirement and any subsequent amendment, any claims which are non-elected must have the status identifier (withdrawn). Any non-elected claims which are being amended must have either the status identifier (withdrawn) or (withdrawn – currently amended) and the text of the non-elected claims must be presented with markings to indicate the changes. Any non-elected claims that are being canceled must have the status identifier (canceled).<

Moreover, as indicated in the following table from MPEP § 714 (page 700-219), “withdrawn” is the proper status identifier for amended, withdrawn claims, whereas “withdrawn – currently amended” is an acceptable alternative.

<u>Status Identifiers Set Forth in 37 CFR 1.121(c)</u>	<u>Acceptable Alternatives</u>
1. Original	Original Claim; and Originally Filed Claim
2. Currently amended	Presently amended; and Currently amended claim
3. Canceled	Canceled without prejudice; Cancel; Canceled; Canceled herein; Previously canceled; Canceled claim; and Deleted
<u>4. Withdrawn</u>	Withdrawn from consideration; Withdrawn – new; Withdrawn claim; and <u>Withdrawn – currently amended</u>
5. Previously presented	Previously amended; Previously added; Previously submitted; and Previously presented claim
6. New	Newly added; and New claim
7. Not entered	Not entered claim

The Examiner is invited to contact the undersigned attorney at 512-536-5654 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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